

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory
Frameworks of Local Exchange Carriers.

Investigation 87-11-033
(Filed November 25, 1987)

**ADMINISTRATIVE LAW JUDGE'S RULING
DIRECTING THAT THE PETITION FOR MODIFICATION OF
DECISION 94-09-065 FILED BY XO CALIFORNIA, INC.
AND ICG TELECOM GROUP, INC. ON AUGUST 6, 2001
BE FILED AS A NEW APPLICATION (CORRECTED)**

On August 6, 2001, XO California, Inc. and ICG Telecom Group, Inc. (jointly Petitioners) tendered for filing a petition for modification of Decision (D.) 94-09-065. The caption for the filing contained Investigation (I.) 87-11-033, the long-standing new regulatory framework investigation, as well as several proceedings that at one time had been consolidated with I.87-11-033. These included Application (A.) 85-01-034, A.87-01-002, I.85-03-078, Case (C.) 86-11-028, I.87-02-025, and C.87-07-024 (collectively the formerly consolidated cases).

The nature of the current petition is to address certain issues concerning customer specific contracts. The specific requests concern the identification of customers and the effective date for such contracts. The parties request modification of D.94-09-065 to make applicable to competitive local carriers and non-dominant interexchange carriers the same rules for General Order 96-A contract filings applicable to incumbent carriers under that decision.

The Petitioners address at some length why they believe this is acceptable as a petition for modification, including the general admonition of Rules of Practice and Procedure 47(d) discouraging such petitions from being filed more

than one year after the date of the underlying decision. While Petitioners reasonably explain why the petition could not have been filed within one year of the issuance of D.94-09-065, they provide less clarity on why the petition could not have been filed years ago, rather than at this time. One of the reasons for Rule 47(d) as presently constituted was to limit petitions for modification to relatively recent decisions and allow old dockets to be closed.

While Petitioners are aware that nearly seven years have passed since D.94-09-065 was issued, they seem unaware that certain other events have occurred relatively recently that preclude this petition from being filed. First, D.97-09-109 closed the previously consolidated dockets. This was after a ruling and opportunity for comment seeking insight as to whether there is any reason for these other dockets to remain open. Second, D.00-07-037 directed that no additional filings would be accepted in I. 87-11-033, a very old open docket, unless they were related to the application for rehearing of D.00-02-047, the last pending matter in this proceeding at that time (D.00-07-037, Ord. Par. 2.)

Contrary to these directions, Petitioners tendered this pleading and it was processed for filing. For the reasons discussed above, it should not have been filed as a petition for modification. Rather, it should have been filed as a new application seeking the relief indicated.

The Commission's Docket Office is directed to cancel the filing of this tendered petition for modification and to refile it as a new application upon receipt from applicant of anything necessary to cure deficiencies it might have for filing as a new application. This shall include such matters as complying with Rule 6 regarding the identification of category, need for hearing, issues to be considered and a proposed schedule. Its filing date should be as of the date those deficiencies are corrected. Notice of the cancellation of the filing of this

petition and of the filing of the new application shall appear in the Commission's Daily Calendar, and the protest period for the application shall run from the date when the notice of filing so appears.

Therefore **IT IS RULED** that:

1. The filing of the petition for modification of Decision 94-09-065 tendered on August 6, 2001 by XO California, Inc. and ICG Telecom Group, Inc. shall be cancelled by the Docket Office.

2. The tendered pleading shall be filed as a new application at such time as it complies with all the current filing requirements for a new application.

3. Notice of the cancellation of the filing of the petition and of the filing of the new application shall appear in the Commission's Daily Calendar. The protest period for the new application shall run from the date when the notice of the filing appears in the Commission's Daily Calendar.

4. Application (A.) 85-01-034, A.87-01-002, Investigation (I.) 85-03-078, Case (C.) 86-11-028, I.87-02-025 and C.87-07-024 are closed.

5. This ruling shall be served on the same persons on whom the petition was served, that being the service lists for I.87-11-033 and the consolidated Rulemaking 95-04-043/Investigation 95-04-044.

Dated August 31, 2001, at San Francisco, California.

Philip S. Weismehl
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Directing that Petition for Modification of Decision 94-09-064 Filed by XO California, Inc. and ICG Telecom Group, Inc. on August 6, 2001 be Filed as a New Application on all parties of record in this proceeding or their attorneys of record and the consolidated Rulemaking 95-04-043/Investigation 95-04-044.

Dated August 31, 2001, at San Francisco, California.

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

L87-11-033 PSW/jyc